

Application No. 10/750,253
Response dated October 18, 2006
Reply to Office Action of July 18, 2006

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Amendments to the Drawings

The attached sheets of drawings include changes to Figs. 12 and 13. Figs. 12 and 13 have been amended to include the legend, "Prior Art," as required by the Examiner. The replacement sheets are labeled "Replacement Sheet" in the page header so as not to obstruct any portion of the drawing figures. These sheets, which include Figs. 12 and 13 replace the original sheets including Figs. 12 and 13.

Attachments: 2 Replacement Sheets

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REMARKS

Claims 1-45 are presented for Examiner Craig's consideration.

Claims 17 and 45 have been amended to require that the "topsheet layer and barrier layer have lateral extensions that are C-folded or Z-folded." Support for this amendment can be found at least at page 16, lines 10-16 of Applicants' specification. No new matter has been added.

Corrected drawings for Figures 12 and 13 are included. The sheets are labeled "Replacement Sheet" as per 37 C.F.R. 1.84(c).

Pursuant to 37 C.F.R. § 1.111, reconsideration of the present application in view of the foregoing amendments and the following arguments is respectfully requested.

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ARGUMENTS

By way of the Office Action mailed July 18, 2006, claims 1-12, 16-28, 31 and 45 stand rejected under 35 U.S.C. § 102 as allegedly being anticipated and thus unpatentable over U.S. Patent Number 6,174,303 to Suprise et al. (*Suprise*). This rejection is respectfully traversed to the extent that it may apply to the presently presented claims.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegall Bros. v. Union Oil Co. of Cal.*, 814 F.2d 628, 631 (Fed. Cir. 1987); M.P.E.P. § 2131. In addition, "[t]he elements must be arranged as required by the claim." M.P.E.P. § 2131 referencing *In re Bond*, 910 F.2d 831 (Fed. Cir. 1990); see also *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989). Also, "[t]he identical invention must be shown in as complete detail as is contained in the . . . claim." M.P.E.P. § 2131 (citing *Richardson*, 868 F.2d at 1236 (Fed. Cir. 1989)).

Independent claims 1, 17, and 45 currently require

an absorbent assembly attached to the exterior surface of the elastic inner layer, wherein the absorbent assembly includes a topsheet layer, a core layer and a barrier layer, and wherein the topsheet layer and barrier layer have lateral extensions that are C-folded or Z-folded.

Suprise does not teach an absorbent assembly having lateral extensions that are C-folded or Z-folded. The Examiner states that "such elasticized edges are fully capable of being C-folded or Z-folded as the wearer moves." (OA at 4:7-8, emphasis added). The "capability" of the elasticized edges in use is not material as to whether this claim limitation is satisfied.

Applicants' specification at page 16, lines 4-16 states that

The lateral extensions of the topsheet layer 153 and the barrier layer 157 may be C-folded or Z-folded prior to attachment to the exterior surface 27 of the elastic inner layer 20. Fig. 6 shows the lateral extensions of the topsheet layer 153 and the barrier layer 157 being Z-folded and attached to the exterior surface 27.... The lateral extensions of the topsheet layer 153 and the barrier layer 157 provide additional volume to hold a larger quantity of absorbent and waste materials without affecting the fit of the garment 100. (emphasis added).

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Figure 6 of Applicants' specification is reproduced below and illustrates an exemplary "Z-fold" as described above.

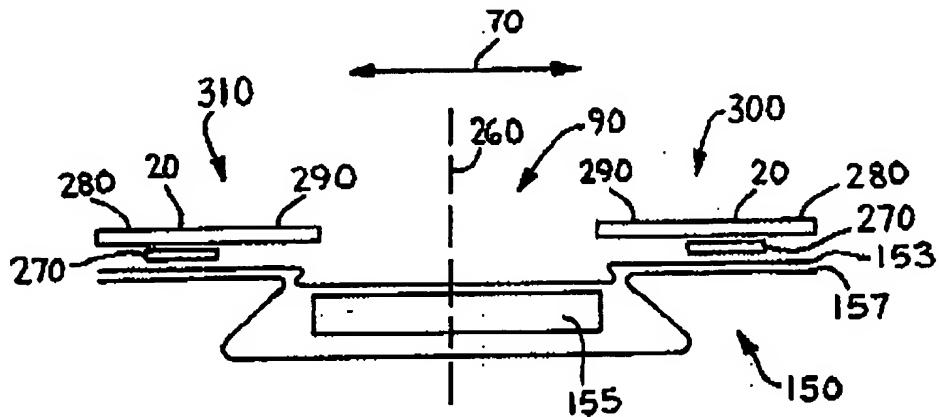


FIG. 6

Clearly, *Suprise* does not teach a topsheet layer and a barrier layer attached to the exterior surface of the elastic inner layer and having lateral extensions that are C-folded or Z-folded, as taught and claimed by Applicants' specification, irrespective of what might occur "as the wearer moves." The claims must be read in view of the specification.

Markman 52 F3d 987.

Therefore, with the term C-fold or Z-fold properly construed, *Suprise* does not teach a topsheet layer or a barrier layer attached to the exterior surface of the elastic inner layer and having lateral extensions that are C-folded or Z-folded. Therefore, claims 1, 17, and 42 are not anticipated by *Suprise* for at least this reason. Claims 2-12, 16, 18-28, and 31 depend from either claims 1 or 17 and are patentably distinct over *Suprise* for at least the same reason. Therefore, Applicants respectfully request that the rejection of these claims be withdrawn.

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By way of the Office Action mailed July 18, 2006, claims 14, 15, 29, and 30 stand rejected under 35 U.S.C. § 103 as allegedly being obvious to one of ordinary skill in the art at the time the invention was made and thus unpatentable over U.S. Patent Number 6,174,303 to Suprise et al. (Suprise). This rejection is respectfully traversed to the extent that it may apply to the presently presented claims.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art references must teach or suggest all the claim limitations. M.P.E.P. § 2142, 2143.

As discussed above, *Suprise* does not teach a topsheet layer or a barrier layer attached to the exterior surface of the elastic inner layer and having lateral extensions that are C-folded or Z-folded. Therefore, claims 1 and 17 are not rendered obvious over *Suprise* because the prior art reference does not teach or suggest all the claim limitations. Claims 14, 15, 29, and 30 depend from either claims 1 or 17 and are patentably distinct over *Suprise* for at least the same reason. Therefore, Applicants respectfully request that the rejection of these claims be withdrawn.

By way of the Office Action mailed July 18, 2006, claims 13 and 32-44 stand rejected under 35 U.S.C. § 103 as allegedly being obvious to one of ordinary skill in the art at the time the invention was made and thus unpatentable over U.S. Patent Number 6,174,303 to Suprise et al. (Suprise) in view of U.S. Patent Number 5,269,775 to Freeland et al. (Freeland). This rejection is respectfully traversed to the extent that it may apply to the presently presented claims.

As discussed above, *Suprise* does not teach a topsheet layer or a barrier layer attached to the exterior surface of the elastic inner layer and having lateral extensions that are C-folded or Z-folded. Claim 13 depends from claim 1 and is patentably distinct over

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Suprise for at least the same reason. Therefore, Applicants respectfully request that the rejection of this claim be withdrawn.

Additionally, no *prima facie* case of obviousness has been established regarding claims 13 and 32 because the combination of *Suprise* and *Freeland* do not teach or suggest, alone or in combination, all the claim limitations and there is no suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to combine reference teachings. Specifically, claims 13 and 32 require, in part, that

the front waist region comprises a fastener located laterally inward of each longitudinal side edge [of the elastic inner layer] and ... the back waist region comprises a fastener located laterally inward of each longitudinal side edge [of the elastic inner layer]....

The Examiner states that "Suprise teaches the fastener being located laterally inward of a longitudinal side edge of **an** elastic layer (note outer layer is elastic, col. 4, lines 55-65)." (OA at page 11, emphasis added). However, the claim requires the fasteners be located laterally inward of each longitudinal side edge of the elastic inner layer. The outer layer 30 is **not** the elastic inner layer as claimed. Therefore, *Suprise* does not teach fasteners located laterally inward of the longitudinal side edge of the elastic inner layer.

Referring to Fig. 2 of *Suprise*, it is clear that both the primary fasteners 62 and 64 and the second fasteners 66 and 68 are NOT located laterally inward of the longitudinal side edge of the waist flaps 80 and 82 or the containment flaps 100 and 102 (which the Examiner collectively considers to be the elastic inner layer). The addition of *Freeland* does not cure this defect as *Freeland* does not teach or suggest any fasteners in the front waist region. Therefore, all the claim limitations are not found in the combination of references.

Additionally, the Examiner acknowledges that "Suprise does not expressly teach the fasteners of the back waist region being located laterally inward of each longitudinal side edge of the elastic inner layer." (OA at page 11). The Examiner looks to *Freeland* to cure this deficiency stating that "it would have been obvious to one of ordinary skill in the art to

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modify *Suprise* to include fasteners of the back waist region located laterally inward of each longitudinal side edge of the elastic inner layer, as taught by *Freeland*." (OA at page 12).

Applicants respectfully disagree. Modifying *Suprise* as suggested by the Examiner would frustrate the purpose of *Suprise*. Referring to Fig. 3 of *Suprise*, if the primary fasteners 62 and 64 were moved laterally inward of the longitudinal side edge of the waist flap 80, as suggested by the Examiner, the portion of the outercover 30 that previously included the fasteners 62 and 64 would be flopping from the diaper 20. This "floppy configuration" would result because the outer cover 30 is desirably connected to the chassis 36 only at the front attached portion 44 and the rear attached portion 46. (*Suprise* at Col. 5: II. 43-54). In other words, the fasteners being attached to the outer cover 30 is what wraps the diaper about the wearer. If the fasteners were moved to the elastic inner layer of *Suprise*, the outer cover would no longer define a waist opening and leg opening and the diaper would not fit as intended. (*Suprise* at col. 4, II. 25-30).

One skilled in the art would not be motivated to modify *Suprise* as suggested by the Examiner. Therefore, no *prima facie* case of obviousness has been established because there is no suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings. Claims 13 and 32 are patentably distinct over the combination of *Suprise* and *Freeland* for at least this reason. Claims 33-44 depend from claim 32 and are patentably distinct over the combination for at least the same reason.

Applicants respectfully request that the rejection of these claims be withdrawn.

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For at least the reasons stated above, it is respectfully submitted that all of the presently presented claims are in form for allowance.

Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

The undersigned may be reached at: (920) 721-3016.

Respectfully submitted,

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